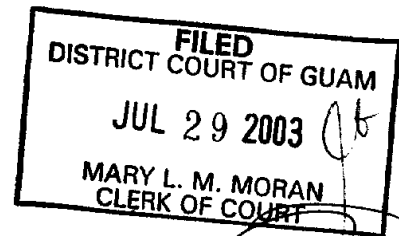


1 Terence E. Timblin  
2 VERNIER & MAHER LLP  
3 115 Hesler Place  
4 Ground Floor, Governor Joseph  
5 Flores Building  
6 Hagåtña, Guam 96910  
7 Telephone: (671) 477 7059  
8 Facsimile: (671) 472-5487

6 Attorney for Plaintiff  
7 KAIOH SUISAN CO., LTD.



8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF GUAM

11 KAIOH SUISAN CO., LTD. ) CIVIL CASE NO. 02-00021  
12 )  
12 Plaintiff, )  
13 )  
13 vs. ) PLAINTIFF'S TRIAL BRIEF;  
14 ) CERTIFICATE OF SERVICE  
14 GUAM YTK CORP., )  
15 )  
15 Defendant. )  
16 )  
16 )

17 COMES NOW, Plaintiff KAIOH SUISAN CO., LTD. through counsel,  
18 VERNIER & MAHER, LLP, by TERENCE E. TIMBLIN, pursuant to LR 16.7(b) and  
19 presents its Trial Brief.

20 Plaintiff previously filed a Motion for Summary Judgment contending that it  
21 was entitled to judgment based on the admissions in Defendant's Answer and the  
22 parol evidence rule. The Court found that Defendant had raised material issues of  
23 fact as to the parties' actual intentions with respect to the transaction in question.  
24 Plaintiff submits that, at the very least, the admissions of Defendant establish  
25

1 Plaintiff's case in chief, that is that the parties signed a written agreement by which  
2 Defendant borrowed One Hundred Million Japanese Yen (¥100,000,000) from  
3 Plaintiff, that Plaintiff transferred ¥100,000,000 to Defendant and that Defendant has  
4 failed to repay any of this amount according to the schedule set forth in the written  
5 agreement.

6 The points cited by the Court as raising a material issue of fact will be  
7 addressed separately.  
8

9  
10 **A. FACTUAL CONTENTIONS**

11 Paragraphs 1, 2, 4, 5, and 6 of the Complaint alleging that the Court has  
12 jurisdiction over this matter; that the amount in controversy exceeds Seventy-Five  
13 Thousand Dollars (\$75,000.00); that Defendant is a corporation organized, existing  
14 and doing business under the laws of Guam; that, on or about March 10, 2001,  
15 Plaintiff and Defendant entered into an Agreement by which Defendant borrowed  
16 ¥100,000,000 from Plaintiff; and that the actual transfer of the funds to Defendant was  
17 accomplished by way of two (2) wire transfers of Fifty Million Japanese Yen  
18 (¥50,000,000) through a corporate subsidiary of Plaintiff, have been admitted.

19 Paragraph 3, alleging that Plaintiff at all times relevant herein, is a foreign  
20 corporation organized and existing under the laws of Japan is denied on the basis of  
21 insufficient information. As noted in the Motion for Summary Judgment, Defendant  
22 has previously admitted the corporate existence of Plaintiff in Civil Case No. 02-00015.  
23 In addition, Defendant did not contest this issue in its Opposition to the Motion.  
24  
25

1 Paragraphs 7, 8, 9 and 10, alleging that, pursuant to the terms of the  
2 Agreement, Defendant was required to repay the loan in installments of Five Million  
3 Japanese Yen (¥5,000,000) at the end of each month beginning with January of 2002;  
4 that the Agreement further provides that Defendant shall pay interest of two percent  
5 (2%) per annum from the date of the transfer of the funds, to be calculated and paid  
6 after the final payment of principal is due; that, as of the end of July of 2002, Thirty-  
7 Five Million Japanese Yen (¥35,000,000) is due and payable and Defendant has failed  
8 and refused to pay any of this amount; and that additional installments will become  
9 due and payable prior to the entry of judgment, should Defendant fail and refuse to  
10 pay these, have been denied.

11  
12 Plaintiff submits that these denials are of no force or effect, as the paragraphs  
13 denied simply reflect the terms of the Agreement, the existence of which Defendant  
14 has admitted, and the logical consequences of failing to comply with it.

15 Defendants asserts as a series of affirmative defenses that, "Notwithstanding  
16 the agreement attached to the Complaint", the transaction was not an actual loan, that  
17 Defendant's President, was deceived by the document as he does not read or write  
18 English, and that Plaintiff breached an alleged duty not set forth in the Agreement.

19 As further evidence that the transaction was a simple loan and nothing else,  
20 Plaintiff submits a letter written in Japanese on Defendant's letterhead and an English  
21 translation of the letter. **Exhibit A.** Copies of the letter and translation were submitted  
22 to Defendant's counsel on April 15, 2003 in anticipation of taking the deposition of Tom  
23 Kamiyama, the President of Defendant, with a request that he review the translation  
24 with Mr. Kamiyama and determine if he believes it to be accurate. **Exhibit B.** Counsel  
25

1 was further requested to obtain his own translation if he did not believe it to be  
2 accurate. As of this writing, there has been no objection to the translation or an  
3 alternative translation provided.

4 The letter is addressed to Yoshiki Kuwahara (mistakenly spelled Kuwabara),  
5 the Chairman of the Board of Plaintiff. It purports to be signed by Mr. Kamiyama and  
6 the signature is similar to that on the Agreement attached to the Complaint, which has  
7 been admitted to be Mr. Kamiyama's. It reads, in part:

8  
9 In order for this project to start, it is necessary to show the  
10 government funds for the (new fishing port) rights and  
11 construction. Please forgive me for a personal request, hut I  
12 would like to borrow a sum of 100,000,000 in two installments.  
13 I will take responsibility to repay this amount. Furthermore, if  
14 necessary, I can provide assets that I own as collateral. I ask  
15 for your favor.

16 He requests installments of ¥50,000,000 each on December 5, 2000 and  
17 January 20, 2001, the same amounts and dates as stated in the Agreement. He  
18 promised a first repayment installment in March, 2001 (the letter actually says "2000"  
19 but, unless he was planning on repaying the loan before he received it, he must have  
20 meant 2001), the initial first installment date in the Agreement before it was crossed  
21 out and replaced with a handwritten "January, 2002". And the monthly installments  
22 were to be ¥5,000,000, the same as provided for in the Agreement.

23 Mr. Kamiyama was repeatedly asked during his deposition whether the  
24 signature on the Japanese version of the letter was his. His answers included: "I'm  
25 not sure"; "It probably – it may be but, you know"; "The way that this is signed, the way  
that the signature is done is the way my signature is written."; "If we're referring to the  
present way that I would do it, this would be my signature"; "It looks like my

1 signature.”; and finally, “I can’t say.” Excerpt of Deposition Transcript of Tom T.  
2 Kamiyama, pages 26-28, hereinafter Tr. K, attached hereto.

3       The Court held in its Order that the terms “advance payment” and “tuna” in the  
4 applications for wire transfers create a material issue of fact. While Plaintiff maintains  
5 it’s position that these terms are of no significance as the were addressed to the bank  
6 and not Defendant and in no way contradict the written Agreement, Plaintiff will offer  
7 testimony that these terms were there because Japanese law requires that some  
8 reason for the transfer must be stated in the application and that if the term “loan” had  
9 been used it would have required additional paperwork. See, Excerpt of Deposition  
10 Transcript of Shunsaku Yuasa, pages 22-24 and Excerpt of Continued Deposition  
11 Transcript of Shunsaku Yuasa, pages 26-28, attached hereto. In his letter requesting  
12 the loan, Mr. Kamiyama refers to “tuna fishing vessels” and that “a Tuna Forwarding  
13 company was established with your cooperation.” Given that the basic purpose of the  
14 loan was to allow Defendant to engage in a business involving tuna, it is not a big  
15 surprise that the term “tuna” appeared on the applications.

16  
17       Plaintiff’s final factual contention is the lack of factual contentions on the part of  
18 Defendant. A claim that the transaction is not a loan does nothing to explain what it  
19 otherwise was.

## 20                                   **B. LEGAL BRIEF**

### 21                                   **i. ISSUES OF LAW**

22       For the same reasons set forth in the Motion for Summary Judgment, Plaintiff  
23 submits that 6 GCA §2511, the Guam parol evidence rule, precludes the use of  
24  
25

1 extrinsic evidence to vary or contradict the terms of the Agreement. Plaintiff adopts  
2 and incorporates the authorities set forth in the Motion as to this issue.

3 The Court found in its Order denying the Motion for Summary Judgment that  
4 Defendant's claim that Mr. Kamiyama did not understand the Agreement raises a  
5 material issue of fact. As pointed out in the Motion, ignorance of the contents of a  
6 contract expressed in a written instrument is no defense to liability. Plaintiff adopts  
7 and incorporates the authorities set forth in the Motion as to this issue. These  
8 authorities have not been distinguished, refuted or even addressed by either  
9 Defendant or the Court. Should the Court still regard this to be a material issue,  
10 Plaintiff would note that it was established in the deposition of Mr. Kamiyama that he  
11 has lived and done business on Guam since 1976. For him to have functioned in an  
12 English speaking society that long without achieving some fluency in English is highly  
13 unlikely. In addition, despite the fact an interpreter was employed, he answered one of  
14 this writer's first questions directly in English. Tr. K 9-10. His claim of ignorance is  
15 simply not credible.  
16

17 The Court noted in its Order that the Agreement did not contain an integration  
18 or merger clause. As pointed out in the Motion, there is no requirement for such a  
19 clause either in §2511 or the common law rule.

20 The Court makes reference in the Order to the business license issue and  
21 correctly notes "it is unclear whether or not the plaintiff's only business (on Guam) is  
22 the 'loaning' of money to the defendant." The parties did, in fact, enter into a separate  
23 transaction by forming a Guam corporation known as Guam Kai Oh Co., Ltd. That  
24 venture did not go well either and resulted in litigation in this Court in Civil Case No.  
25

1 02-00015 which has since been dismissed due to the loss of diversity and refiled in the  
2 Superior Court of Guam. The statement in the Reply to the Opposition to the Motion  
3 for Summary Judgment that the Plaintiff's only connection with Guam is the lending of  
4 money to a business on Guam was meant to convey that the lending of money was  
5 the only connection with respect to this transaction. The fact that the parties entered  
6 into another transaction does not create a business license defense as to this one.

7  
8 First, the other transaction was the formation of a Guam corporation, which, in  
9 the now unlikely event that it ever has income, will be subject to and pay GRT. As  
10 noted by the Supreme Court of Guam in EIE Guam Corporation v. Long Term Credit  
11 Bank of Japan, 1998 Guam 6, 11 GCA § 70130(f) requires a court to "liberally  
12 construe subsections (b) through (e) of this Section in favor of . . . the business person  
13 and . . . ignore technical deficiencies if the courts find there has been substantial  
14 compliance with the business license laws, rules, and regulations and if the courts find  
15 that the landlord or business person has filed on a timely basis . . . gross receipts tax  
16 returns fully reporting all accountable revenues from the activity concerned for the  
17 periods in question . . . ." The primary purpose of the formation of the corporation was  
18 to lawfully do business on Guam and to comply with all legal requirements including  
19 the payment of taxes.

20 Second, the only reason that there was no business license is that Mr.  
21 Kamiyama, the President of Guam Kai Oh Co., Ltd., failed to obtain one. He was the  
22 "local partner" who had been doing business on Guam since 1976 and Plaintiff  
23 reasonably relied on him to comply with all local requirements such as obtaining a  
24 business license. He well knew that a business license was required because he had  
25

1 obtained one for Guam YTK Corporation. Tr. K 12-13. He was able to accomplish the  
2 incorporation of Guam Kai Oh Co., Ltd. and he admitted in his deposition that he could  
3 have obtained a business license at any time. Tr. K 39-42. He is hardly entitled to  
4 complain about the absence of a business license that he should have obtained in the  
5 first place.

6 And third, 11 GCA § 70130(g) provides that the failure of one party to have a  
7 business license shall be an affirmative defense by any other party. Defendant has  
8 failed to plead the lack of a business license as an affirmative defense and it is now  
9 waived.  
10

11 Where Plaintiff intended to do business on Guam, it took reasonable steps to  
12 comply with local tax law. Where it did not intend to do business on Guam it was not  
13 required to comply with local tax law. As held in the EIE case, the loaning of money to  
14 a company on Guam by an off-Island entity does not constitute doing business on  
15 Guam. In any event, the existence of the lack of a business license is only an issue in  
16 "Guam courts". As this Court is a creature of the United States Congress rather than  
17 the Legislature of Guam, Plaintiff submits that this is not a "Guam court".

18 Plaintiff submits that damages should be awarded as set forth in the Motion for  
19 Summary Judgment.  
20

## 21 **ii. EVIDENTIARY PROBLEMS**

22 As noted above, any evidence offered by Defendant of terms other than the  
23 contents of the written Agreement is barred by 6 GCA §2511.  
24  
25



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**C. ATTORNEY'S FEES**

Plaintiff submits that there is no basis for the recovery of attorney's fees by either party.

**D. ABANDONMENT OF ISSUES**

No issue has been abandoned by Plaintiff.

Dated this 29<sup>th</sup> day of July, 2003.

**VERNIER & MAHER, LLP**  
Attorney for Plaintiff  
**KAIOH SUISAN CO., LTD.**

By: 

**TERENCE E. TIMBLIN**

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**Phillip Torres**  
**TEKER CIVILLE TORRES & TANG, PLLC**  
 Suite 200, 330 Hernan Cortez Avenue  
 Hagåtña, Guam 96910

Dated this 29<sup>th</sup> day of July, 2003.

BY:

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**Guam Y.T.K. Corporation**

General Development Industry

P.O. BOX 24134

GMR GUAM 96921 U.S.A.

PHONE: 649-6961 • FAX: (671) 649-7520

Y.T.K. Marine Products

海王水産株式会社

桑原 芳樹 様

先般は お忙しい中 グアムまでお越しいただきありがとうございます。  
貴殿ご視察のとおり現在グアムは日本及び台湾のまぐろ船の  
日本への中継基地として発展しつつあります。私共もグアム政府よ  
りやっと漁港（ホテルワーフ）の使用リース権を得てその準備に入  
っております。幸運にも鳴島氏の紹介で貴海王水産、桑原会長 お  
よび 湯浅社長とお会いする事ができ、又、まぐろ出荷会社を貴社の  
ご協力を得て設立する事が出来、私の念願であったこの仕事もどう  
にか先が見える様になりました。現在、新しくまぐろの水揚げ場所  
になる ホテルワーフ に仮設の事務所と作業場を作るべく準備して  
おります。今月中には出来上がる予定です。今後は海王水産と一緒に  
このプロジェクトを成功させる為にがんばっていく決意です。

ホテルワーフ（新漁港）の政府との本契約の条件も詰めており、諸  
条件合意の元で無事契約できると思います。

本プロジェクトをスタートする為に政府に対しての権利金および建  
設準備金の用意を示す必要があり、大変勝手申して申し訳ありませ

Exhibit

A

んが、準備金として一億円を 2 回に分けてお借りしたくお願い申し上げます。この金額に対しては私が責任をもってご返済いたします。又、必要であれば、私の持っている資産を担保として提出できます。よろしく願いいたします。

資金必要月/日

第 1 回 2000 年 12 月 5 日 5000 万円

第 2 回 2000 年 1 月 20 日 5000 万円

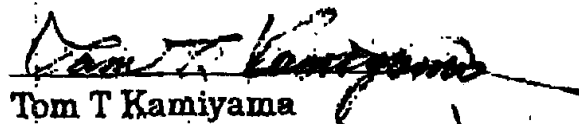
計 一億円

借入金返済計画

第 1 回 2000 年 3 月より

金\*500\* 万円を毎月末日までにご返済いたします。又、銀行借入 及び、その他業者からの権利金を得られた時は残金を一括してご返済いたします。ぜひともご協力の程よろしくお願いします。

Guam YTK Corporation

  
Tom T Kamiyama

# *Guam YTK Corporation*

General Development Industry

P.O. BOX 24134

GMF, GUAM 96921 U.S.A.

Phone: 649-6961 Fax: (671) 649-7520

Y.T.K. Marine Products

Kaio Suisan Co., Ltd.

Mr. Yoshiki Kuwabara

Thank you for visiting Guam recently despite your busy schedule. As per your inspection, Guam has the capability to develop into a port of transfer to Japan for Japanese and Taiwanese tuna fishing vessels. I have finally acquired the lease rights to use a fishing port (Hotel Wharf) from the government, and am presently making those preparations. I had the good fortune through Mr. Narushima of being introduced to Kaio Suisan, Chairman Kuwabara, and [the] President Mr. Yuwasa. Also, a Tuna Forwarding company was established with your company's cooperation. It seems that my heart's wish for this work is in sight. Presently the necessary preparations are being made for a temporary office and work area at the future fish off-loading site at Hotel Wharf. Completion is scheduled to be within this month. I have determined to work hard with Kaio Suisan to succeed with this project. The conditions of the contract with the Government for Hotel Wharf (new fishing port) are also being put together, and I believe that through the agreement of the various conditions that a contract can be concluded.

In order for this project to start, it is necessary to show the government funds for the [new fishing port] rights and construction. Please forgive me for a personal request, but I would like to borrow a sum of 100,000,000 in two installments. I will take responsibility to repay this amount. Furthermore, if necessary, I can provide assets that I own as collateral. I ask for your favor.

## Necessary Dates for Funds

First payment:	December 5, 2000	50,000,000Yen
Second payment:	January 20, 2001	50,000,000Yen
	Total:	100,000,000Yen

## Plan for Repayment of Loan:

First payment: From March 2000

an amount of 5,000,000 will be repaid at the end of each month. Also, once a bank loan and the payment by other companies for the rights are received, the remaining balance [of the loan] will be repaid in one lump sum payment. I request for your cooperation.

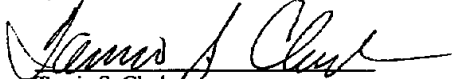
Guam YTK Corporation

---

Tom T. Kamiyama

Certificate of Translation

I, Tamio S Clark, a duly approved translator and interpreter with the Superior Court and District Court of Guam, do hereby certify that the above document (two pages total) was translated by me to the best of my ability.

  
Tamio S. Clark

FRANCIS M. McKEOWN  
D. PAUL VERNIER, JR.\*\*  
JOHN G. PRICE\*  
JOHN B. MAHER\*\*  
COLIN C. MUNRO\*  
LOUIE J. YANZA\*\*  
MICHAEL D. FLYNN, JR.  
THOMAS S. CLIFTON\*  
TERENCE E. TIMBLIN\*\*  
JEANINE M. LARREA\*



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\*ADMITTED IN CA  
\*\*ADMITTED IN GUAM

April 15, 2003

**VIA FACSIMILE – 472-2601**

Mr. Phillip Torres  
**TEKER CIVILLE TORRES & TORRES, PLLC**  
Suite 200, 330 Hernan Cortez Avenue  
Hagatna, Guam 96910

RE: **KAIOH SUISAN CO., LTD. v. TOM T. KAMIYAMA, ET AL.**  
**Superior Court of Guam Civil Case No. CV1837-02**

- and -

**KAIOH SUISAN CO., LTD. v. GUAM YTK CORP.**  
**United States District Court Civil Case No. CV02-00021**

Dear Phil:

Enclosed is a copy of a two-page letter written in Japanese on the letterhead of the Guam YTK Corporation and purportedly signed by Tom Kamiyama, as well as an English translation of the letter performed by Tamio S. Clark. I intend to explore this letter during Mr. Kamiyama's deposition. In order to avoid needless delay during the deposition, I request that you review the translation with Mr. Kamiyama and determine if he believes it to be accurate. If he does not believe it to be accurate, I request that you have your own translation performed and provide it to me prior to the deposition.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

**McKEOWN • VERNIER • PRICE • MAHER**

Terence E. Timblin

Enclosure

cc: Mr. Shunsaku Yuasa  
Allen D. Clark

\\Valerie\c\MarieBackup\My Documents\CLIENTS (NON-GIA)\KAIOH SUISAN CO. LTD\Kaioh Suisan v Tom Kamiyama, et al -  
CV1837-02\Correspondence\Torres 041503.doc

BERKELEY OFFICE: 2030 ADDISON STREET, SUITE 300 • BERKELEY, CA 94704  
TELEPHONE 510-549-8787 • FACSIMILE 510-549-8788

Exhibit

B

SUPERIOR COURT OF GUAM

KAIOH SUISAN CO., LTD., and  
GUAM KAI OH CO., LTD.,

Plaintiffs,

vs.

TOM T. KAMIYAMA, YOSHIE M.  
KAMIYAMA and GUAM YTK CORP.,

Defendants. )

Civil Case No. CV1837-02

 **COPY**

**RECEIVED**

McKEOWN. VERNIER.

PRICE. MAHER

DATE: 6/12/03

TIME: 11:43 a.m.

BY: JMA

DEPOSITION OF TOM T. KAMIYAMA

Taken on Behalf of the Plaintiffs

BE IT REMEMBERED That pursuant to the Guam Rules of Civil Procedure, the deposition of TOM T. KAMIYAMA was taken before Cecille A. Flores, a Certified Shorthand Reporter, on Friday, the 25th day of April 2003, in the law offices of McKeown, Vernier, Price & Maher, Ground Floor, Gov. Joseph Flores Bldg., 115 Hesler Place, Hagatna, Guam, at the hour of 10:00 a.m.

Flores Court Reporting  
Suite 2E, Jugo Building  
618 Route 8

Barrigada, Guam 96913



1 A Yes.

2 Q When did you get married?

3 A I've been involved with so much business and I've  
4 gotten old, I think it was in 1978.

5 (In English) Yes.

6 (Through Translator) I have proof of that, it's just  
7 that it hasn't sunked into my memory. In Japan -- there's  
8 one more thing that needs to be known. None like the US, we  
9 only remember the year of the marriage rather than like in  
10 the United States.

11 Q Otherwise, you're going to be in big trouble.

12 A I would have to say one more thing that I needed to.  
13 During my era, it was a period that was very similar to  
14 something like how Iran is very, very strict. And it was  
15 just required -- or the only thing -- we don't remember  
16 details, we just remember -- for example, the year.

17 MR. TORRES: Can we go off the record for a  
18 minute?

19 (Recess taken.)

20 BY MR. TIMBLIN: (Continuing)

21 Q Mr. Kamiyama, when did you first come to Guam?

22 A (In English) 1976.

23 Q Sir, you just answered my question directly rather  
24 than through the interpreter. Roughly how much English do  
25 you understand?

Tom T. Kamiyama: April 25, 2003

1       A     I can understand simple questions like what you just  
2 asked, but for example, English writing, I do not understand.

3       Q     Well, I would ask you to wait until I ask the  
4 question and the translator translates it and then listen to  
5 the translator and then respond through the translator rather  
6 than directly to me, otherwise we're going to have a lot of  
7 confusion.

8       A     (Witness nodded head.)

9       Q     What was your purpose in coming to Guam?

10      A     For business.

11      Q     What kind of business?

12      A     At first it was for construction.

13      Q     How many years, say from 1976 until when, were you  
14 in construction?

15      A     Up until the present time.

16      Q     You were engaging in construction until this day?

17      A     Yes, I continue in construction whenever I have an  
18 order.

19      Q     What's the name of your construction company?

20      A     Guam YTK Corporation.

21      Q     So Guam YTK does construction as well as apparently  
22 the fishing business; is that correct?

23      A     Yes.

24      Q     Does Guam YTK do anything else besides construction  
25 and the fishing business?

Tom T. Kamiyama: April 25, 2003

1 A I need to take a look at that.

2 Q What percentage of shares are owned by you?

3 A I think around 60 percent.

4 Q What percentage is owned by your wife?

5 A I'm not sure, but around 30 percent.

6 Q So then that leaves roughly 10 percent owned by

7 Mr. Kamiseido?

8 A Yes.

9 Q Does Mr. Kamiseido live on the island or in Japan or  
10 someplace else?

11 A In Japan.

12 Q The answer is, in Japan?

13 TRANSLATOR: In Japan.

14 Q When you formed Guam YTK, did you obtain a Guam  
15 business license for it?

16 A Within one week thereafter, and that is needless to  
17 say that it is something that needs to be done.

18 Q When you first formed the corporation in 1978, you  
19 got a business license and every year since then you've  
20 renewed the business license?

21 A Yes.

22 Q Have you always paid the gross receipts tax on your  
23 business?

24 A Of course. You would not be able to renew your  
25 license without paying the GRT.

Tom T. Kamiyama: April 25, 2003

1 Q So you understand that anybody that wants to conduct  
2 business on Guam has to have a business license?

3 MR. TORRES: Objection to the extent that it  
4 calls for a legal conclusion. You can answer if you can  
5 answer.

6 A I'm sorry, can you repeat the question?

7 BY MR. TIMBLIN: (Continuing)

8 Q Do you understand that anybody that wishes to engage  
9 in business on Guam must have a business license?

10 A Yes, I do understand that. However, I have one  
11 thing to say. One thing I have to say is that when  
12 establishing a corporation, there has to be a clear, defined  
13 purpose of what you want to do, otherwise, getting a business  
14 license makes -- doesn't have any meaning without that  
15 defined purpose.

16 Q Back in November of 2000, could you tell us exactly  
17 what happened that you decided to get into the fishing  
18 business?

19 A Because I have done fishing business in Okinawa  
20 before. And in order to add to the business for YTK, I got  
21 involved in the fishing business. And would you mind if I  
22 add more to that? Before that, my brother-in-law sent to me  
23 a fishing vessel.

24 Q When you say you were doing the fishing business in  
25 Okinawa, when was that?

Tom T. Kamiyama: April 25, 2003

1 Q Was that your understanding about what that document  
2 meant or did you think it was something else?

3 A I had no -- absolutely no understanding that that  
4 meant that I was borrowing money.

5 Q Who gave you this document to sign, if you remember?

6 A Three of the individuals, Mr. Narushima, the  
7 Chairman, and the President came together at that time.

8 Q Did you ask him what this meant before you signed  
9 it?

10 A I thought it was just a division of shares, but I  
11 had no idea that it meant we were borrowing money.

12 Q But my question is, did you ask these people what  
13 this document meant before you signed it?

14 A No.

15 MR. TIMBLIN: Could you mark this as 3A and 3B?  
16 (Exhibit 3A and 3B marked for  
17 identification: Japanese and  
18 English letter from Mr. Kamiyama  
19 to Mr. Kuwabara.)

20 MR. TIMBLIN: We're starting with Exhibit 3A  
21 which is the document on the Guam YTK Corporation letterhead  
22 written in Japanese characters, and then Exhibit 3B is what  
23 purports to be a translation of the same document in English.  
24 And I would ask the translator, did you in fact translate  
25 Exhibit 3A into 3B?

Tom T. Kamiyama: April 25, 2003

1 TRANSLATOR: Yes, I did.

2 MR. TIMBLIN: Is that true and correct to the  
3 best of your ability?

4 TRANSLATOR: To the best of my ability, yes, it  
5 is.

6 MR. TIMBLIN: Do you regard that as accurate?

7 TRANSLATOR: As accurate as possible, yes.

8 MR. TORRES: Before you ask questions, I want to  
9 interpose my objection on the record rather than simply voir  
10 dire. We were provided with a translated copy on April the  
11 18th, my office was, and I have not had a chance to get an  
12 independent translation. I have no objections proceeding  
13 with questions upon the document subject to foundation.

14 MR. TIMBLIN: Thank you.

15 BY MR. TIMBLIN: (Continuing)

16 Q I'll show you what's been marked as Exhibit 3A.  
17 First of all, is this your signature on Page 2?

18 A I'm not sure because I don't remember borrowing -- I  
19 don't remember borrowing a Hundred Million Dollars -- a  
20 Hundred Million Yen, I'm sorry.

21 Q The question is, is that your signature on the  
22 second page of that document?

23 A It probably -- it may be but, you know,  
24 Mr. Narushima -- it's like an original. You know,  
25 Mr. Narushima could have done something to -- something with

Tom T. Kamiyama: April 25, 2003

1 the signature.

2 MR. TORRES: I'd like to interpose another  
3 objection on the best evidence regarding use of this copy.

4 BY MR. TIMBLIN: (Continuing)

5 Q Regardless of what Mr. Narushima may or may not have  
6 done, is that your signature on the document?

7 A The way that this is signed, the way that the  
8 signature is done is the way my signature is written. But  
9 the contents of this never made a document like this. There  
10 is no type like this here.

11 Q One last time, is that your signature on that  
12 document regardless of who put the other words there?

13 A If we're referring to the present way that I would  
14 do it, this would be my signature.

15 Q So that is in fact your signature?

16 A This -- I don't know.

17 Q Are you denying that --

18 A It looks like my signature.

19 Q Do you deny that it is your signature?

20 A I can't say.

21 Q Your answer is that you do not know whether or not  
22 that is your signature?

23 A Yeah, that's all I can say.

24 Q On the first page of the document, is this the Guam  
25 YTK letterhead?

Tom T. Kamiyama: April 25, 2003

1 like the containers -- there is also air conditioners and  
2 stuff like that -- any item paid by these checks belongs to  
3 the Guam Kaioh Corporation; is that correct?

4 A What was originally planned was that the money that  
5 was to be used -- the Guam Kaioh Suisan money to be used, but  
6 because they did not have a business license, the plan was  
7 that eventually it would become Guam Kaioh Suisan items.

8 Q So my question then is, do you regard this property  
9 right now to be the property of Guam Kaioh?

10 A These are the -- these are the items of both YTK and  
11 Guam Kaioh Suisan. And the reason is because prior to that,  
12 YTK had leased these offices prior to Kaioh Suisan.

13 Q So is your answer that it belongs to both Guam Kaioh  
14 and Guam YTK?

15 A At this present time, there is no other way to look  
16 at it than that. The reason for that is -- and this is also  
17 in understanding between all the gentlemen, Mr. Narushima,  
18 and the President that understood that there was a sign that  
19 was prepared that was supposed to have Kaioh Suisan's name on  
20 it eventually. And once it became -- once everything -- a  
21 license was received, then immediately Kaioh Suisan's name  
22 would be on the name tag.

23 Q Now, you're saying that you never got a business  
24 license for Guam Kaioh; is that correct?

25 A No. Yes, no license. And I just said that earlier;

Tom T. Kamiyama: April 25, 2003



1 right? I told you earlier that there was no license.

2 Q I'm just making sure. So why did you not get a  
3 license for Guam Kaioh?

4 A Now you're asking the same question again. Because  
5 as I mentioned, their understanding -- they're supposed to  
6 get 20 to 25 vessels that were supposed to be prepared by  
7 Kaioh Suisan. Until that is done, what purpose or what  
8 reason are we going to be getting a business license for  
9 without that? That's why I'm saying --

10 Q You indicated before you understand you need a  
11 license to do business on Guam; is that correct?

12 A When you're going to start your business and begin  
13 operations. For example, in my case, I was ready to start  
14 construction immediately after establishing my company,  
15 that's why we got a business license.

16 Q So you didn't think you needed a business license  
17 until you actually started doing business; is that correct?

18 A No, this was their understanding. They knew  
19 originally that -- I introduced them to the Port Authority  
20 saying that their business could begin or that they would be  
21 getting a license once they had provided their 20 to 25  
22 vessels.

23 Q Was there anything preventing you from simply  
24 getting a business license whether you got the vessels or  
25 not?

Tom T. Kamiyama: April 25, 2003

1       A     No. However, what I'm saying is that how would we  
2 do business without them providing the vessels?

3       Q     That's not the question. The question is, was there  
4 anything preventing you from simply getting a Guam business  
5 regardless of these vessels?

6       A     No, no reason at all. I was waiting for them -- I  
7 was waiting for them to come out. That's why I opened up a  
8 big space for them.

9       Q     So it was your decision, then, not to get a business  
10 license even though you could have?

11       A     This is not my decision, as I told Mr. Narushima  
12 before. Mr. Narushima was -- Mr. Narushima is the one who  
13 handled everything for Kaioh Suisan. In essence, really,  
14 Kaioh Suisan didn't know precisely what was going on. As I  
15 mentioned on the first meeting that we had, he said -- I told  
16 Mr. Narushima that I've been away from Japan for almost 20  
17 years, so I don't know what the -- how things are done in  
18 Japan. And Mr. Narushima told me, no, Tom, don't worry, you  
19 leave Japan side up to me is what Mr. Narushima told me.

20       Q     So basically, Mr. Narushima was leaving the Guam  
21 side up to you, wasn't he?

22       A     Mr. Narushima said, just for the time being, operate  
23 the business under YTK, is what Mr. Narushima said.

24       Q     But he didn't tell you not to get a business  
25 license, did he?

Tom T. Kamiyama: April 25, 2003

1       A     No, this is what I told him.

2       Q     So basically, my question again is that it was your  
3 decision not to get a business license until later when you  
4 started doing business; is that correct?

5       A     This is not a decision made on my own. This  
6 decision was made in discussion with Mr. Narushima.

7       Q     But Mr. Narushima did not say, don't get a business  
8 license, did he?

9       A     No, he didn't.

10      Q     So again, it was your decision to not get a business  
11 license?

12      A     Yes, because I am the one representing, I did not  
13 make the application.

14      Q     Tell him that until we ask a question, he is not to  
15 say anything. Moving on to Exhibit 7 now. Mr. Kamiyama,  
16 this is dealing now with the 100,000,000 Yen case. And  
17 again, I believe Mr. Torres asked you to provide him with  
18 copies of all the checks that you spent with this money. Do  
19 you recall that?

20      A     Yes, I remember. And I gave everything that I had  
21 to him.

22      Q     For the record --

23      A     I have -- I'm not like Mr. Narushima to have  
24 anything hidden or any devious plan. I'm a straight type of  
25 person. What I have, I've given.

Tom T. Kamiyama: April 25, 2003

IN THE DISTRICT COURT OF GUAM

KAIOH SUISAN CO., LTD.,	)	CASE NO. 02-00021
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GUAM YTK CORPORATION,	)	
	)	
Defendant.	)	

DEPOSITION UPON ORAL EXAMINATION  
KAIOH SUISAN CO., LTD.  
through its designated representative  
SHUNSAKU YUASA

PLEASE TAKE NOTICE that on Thursday, May 21st, 2003, at 1:50 p.m., at the Law Offices of TEKER CIVILLE TORRES & TANG, PLLC, Suite 200, 300 Hernan Cortez Avenue, Hagatna, Guam 96910, the deposition of Kaioh Suisan Co., LTD., through its designated representative, SHUNSAKU YUASA, was taken upon oral examination pursuant to Notice of Deposition.

**COPY**

1 Q Did they say that they had ships, that they  
2 personally had ships?

3 A In my -- yes, this -- ships?

4 Q Boats.

5 A Boats, vessels, yes.

6 Q Vessels.

7 A Vessels, in my knowledge, we transfer the  
8 hundred million, and by using this hundred million,  
9 they purchase this vessel, Oryo Maru.

10 Q Okay.

11 A Without using for the, the deposit for the  
12 government. I'm not too sure, you know.

13 Q When Japan Russia Marine Products Company  
14 sent this money on your behalf; did you have to sign a  
15 loan with them?

16 A Oh, no, this one is just, as I told you,  
17 application for the bank.

18 Q But the money that's coming in here, is this  
19 your money?

20 A Of course our money.

21 Q And does it come out of your company, or did  
22 you get a bank loan for this?

23 A Of course, as I told you, Japru is a  
24 subsidiary company, so Kaioh Suisan transferred money,  
25 Japru transferred money.

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1 Q So Kaioh Suisan never had to take out a loan  
2 to send the 200,000 or the one million?

3 A No.

4 Q Do you know why this is advance payment for  
5 tuna?

6 A You know, the bank, we have to put some words  
7 when we transfer the money in Japan according to the  
8 regulations. So advance payment or purchase or  
9 something or, you know, so this is it. I instructed  
10 to put the word advance payment. Advance payment is  
11 easy to get permission from the bank.

12 Q So if you put down that I'm loaning them  
13 money, would that be a problem?

14 A You mean --

15 Q If it said loan to Guam Kaioh?

16 A No, no, no, but this just for the purpose of,  
17 for sending the money, permission to get the  
18 permission of the bank. So this is nothing to do with  
19 the loan agreement, just application to transfer the  
20 money, the way of transferring the money. So don't --  
21 this is just -- this doesn't connect with loan  
22 agreement.

23 Q I know.

24 A Yeah.

25 Q I know, but my question is what if you had

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1 written down loan to Kamiyama?

2 A Loan, never. If we put the loan, we have  
3 another very complicated procedure; I mean the  
4 permission from the national bank or something. So  
5 it's very easy way, two ways, purchase a product easy,  
6 advance payment easy. But loan, in order to make some  
7 loan, we have another -- we must get another  
8 permission from the government.

9 Q Okay.

10 A So that's why, you know, and also this one,  
11 200,000, also we need permission, investment,  
12 permission. That's why we transferred from United  
13 States.

14 Q This is Exhibit 5. This is your agreement on  
15 the 100 million yen?

16 A Yeah.

17 Q And who wrote that agreement?

18 A I instructed, and my staff typed.

19 Q Because it looks very much like this  
20 agreement.

21 A Uh-huh.

22 Q And when I say "this agreement," I referred  
23 to Exhibit 2.

24 **THE WITNESS:** This is my signature.

25 Q Do you know -- so you met with them or did

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1  
2  
3  
4  
5 IN THE DISTRICT COURT OF GUAM

6  
7 KAIOH SUISAN CO., LTD., ) CASE NO. 02-00021  
8 )  
9 Plaintiff, )  
10 )  
11 vs. )  
12 )  
13 GUAM YTK CORPORATION, )  
14 )  
15 Defendant. )  
16

CONTINUING DEPOSITION UPON ORAL EXAMINATION  
KAIOH SUISAN CO., LTD.  
through its designated representative  
SHUNSAKU YUASA

17  
18 PLEASE TAKE NOTICE that on Wednesday, June 11<sup>th</sup>,  
19 2003, at 9:45 a.m., at the Law Offices of TEKER CIVILLE  
20 TORRES & TANG, PLLC, Suite 200, 300 Hernan Cortez Avenue,  
21 Hagatna, Guam 96910, the continuing deposition of **Kaioh**  
22 **Suisan Co., LTD.**, through its designated representative,  
23 **SHUNSAKU YUASA**, was taken upon oral examination pursuant to  
24 Notice of Deposition.

25  
26 RECEIVED **COPY**

McKEOWN. VERNIER.

PR CE. MAHER

DATE: 6/23/03

TIME: 3:47 pm

BY: R.M.



1 A Uh-huh.

2 Q So you were explaining that the transfer is  
3 illegal, but you also in your previous deposition were  
4 explaining that the reason you put advance payment for  
5 tuna was because it would be much more difficult.

6 A You are still sticking to advance payment?

7 Q Well, no. You explained at your deposition  
8 that you had Japan Merchant Marine send this money,  
9 and that the reason it says advance payment and not  
10 loan is because you would have to get special  
11 permission or something.

12 A That's right, that's right. It's a little  
13 more difficult, you know, so the advance payment is  
14 easier to get permission to transfer the money.

15 Q Who would you have to get permission from?

16 A In case of loan?

17 Q Yes.

18 A Loan is Japanese Minister of Finance, and  
19 also the Japan bank, the national bank.

20 Q Is that a lengthy process? Is that --

21 A We need many papers to show the scheme or  
22 everything.

23 Q And does that cost money also?

24 A Huh?

25 Q Is there a charge, a fee to do that?

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1 A No, no charge, no charge but we must prepare  
2 the -- and this is so urgent, so it's easy.

3 Q Okay.

4 A This is easy, just we will transfer the money  
5 quickly, you know.

6 Q And you said that you never received any  
7 reports as to how the one million was being spent.

8 A No, never.

9 Q And did you ask for any reports?

10 A Of course myself I never ask, so always --

11 Q Through your staff.

12 A Through my staff because this is -- yeah.

13 Q What I don't understand is sometimes I ask my  
14 staff to do things. For example, I called your  
15 attorney yesterday or I said, "Please call your  
16 attorney and say we're going to change the time from  
17 9:00 to 9:30." Now if they call and leave a message,  
18 they haven't accomplished what I asked them to do, and  
19 of course if you show up at 9:00 o'clock, you didn't  
20 know any differently.

21 A No.

22 Q So I get upset when they just leave a message  
23 because they haven't done -- they have to do more than  
24 that. So when you send your staff over here to say,  
25 "I want to know how this money is being spent," and